custom or practice of the architectural profession. P.14 seems to me to be limited to the specific question of calculating the full fee when the project was successfully completed and did not provide for the contingency of abandonment and it is, in my opinion, therefore fair and reasonable to imply Clause 3 (viii) read which Clause 3(iv) of P.50 into P.14. I accordingly enter judgment for the plaintiff in respect of fees due to the architect for abandonment of the project as follows:

1.	Estimate total cost of the project	=	$35,024,900.00
2.	Abandoned fees at 2/3 of 33¾% of estimated total cost	=	$ 875,622.50
3.	To payment on account	=	$ 190,000.00
	Balance due	=	$ 685,622.00

This sum of $685,622.50 will bear 8% interest from the date of the service of the writ. The plaintiff will also be entitled to the costs of this suit.

Application allowed.

Solicitors: *Krishnan V. Co.; Jagjit Singh & Co.*

HOCK HIN BROS. SDN. BHD. v. LOW YAT HOLDINGS SDN. BHD.

[O.C.J. (Edgar Joseph Jr.J.) July 4 & September 26, 1983]

[Penang – Civil Suit No. 268 of 1983]

Land Law – Caveat – Caveat removed by Registrar of Titles – Whether further caveat may be lodged by same person to protect the same claim on the same grounds – National Land Code, ss. 326(3) & 329(2).

In this case the defendant company applied for the removal of a caveat lodged by the plaintiff company in respect of certain land. The question raised was whether where a caveat has been in existence but has been removed by the Registrar of Titles any further caveat may be lodged by the same person to protect the same claim on the same grounds.

Held: the application for entry of a further caveat in this case was not prohibited by the National Land Code and therefore the application for the removal of the caveat must be dismissed.

Cases referred to:

(1) *Hong Keow Tee & Anor.* v. *Alkhared & Khoo Holdings Sdn. Bhd.* [1982] 2 M.L.J. 42.
(2) *Damodaran* v. *Vasudeva* [1974] 1 M.L.J. 128.
(3) *Arul Chandran* v. *Tara Rajaratnam* [1979] 2 M.L.J. 172, 174.
(4) *Forster* v. *Baker* [1910] 2 K.B. 636, 639.
(5) *Green* v. *Berliner* [1936] 2 K.B. 477, 493.
(6) *Police Authority for Huddersfield* v. *Watson* [1947] K.B. 842, 848.
(7) *Alma Shipping* v. *Salgaoncar* [1954] 2 Q.B. 94.
(8) *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim* [1959] M.L.J. 257.

CIVIL SUIT.

Gan Teik Chee for the plaintiff.
P. Navaratnam for the defendant.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: At the conclusion of the arguments I dismissed this application by Summons-in-Chambers by the Defendant Company, praying for removal of a caveat lodged by the Plaintiff Company in respect of certain land, the subject of the suit herein, and said that I would give my reasons for decision, which I now do.

The short but ever recurring and important point of law raised was whether, where a caveat was in existence, but has been removed by the Registrar of Titles pursuant to the provisions of section 326(3) of the *National Land Code*, any further caveat may be lodged by the same person to protect the same claim on the same grounds?

In *Hong Keow Tee & Anor.* v. *Alkhared & Khoo Holdings Sdn. Bhd.*[1], Arulanandom, J. answered this question in the negative, relying on *Damodaran* v. *Vasudeva*[2] and *Arul Chandran* v. *Tara Rajaratnam*[3]. I regret I found myself unable to agree with him. I recognised that judges sitting alone, whether in civil or criminal proceedings, and whether exercising original or appellate jurisdiction, are not bound by each other's decisions (*Forster* v. *Baker*[4]; *Green* v. *Berliner*[5]; *Police Authority for Huddersfield* v. *Watson*[6]; *Alma Shipping Co.* v. *Salgaoncar*[7]) though judicial courtesy requires that they do not lightly dissent from the considered opinions of their brethren. It was with these considerations in mind that I had approached the task of answering the question of law posed.

The only provision that prohibits an application for entry of a further caveat based on the like claim as that on which the former one was based is section 329(2) of the *National Land Code*, which explicitly provides:

"Where the court has ordered the removal of any private caveat under section 327, or has refused an application under sub-section (2) of section 326 for an extension of time with respect to any such caveat, the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based."

In the instant case, the former caveat was removed not pursuant to any Order of Court but pursuant to the administrative act of the Registrar of Titles acting under section 326(3) of the *National Land Code*. It seemed to me, with all due respect, that all the learned judges in the local cases cited were unduly swayed by the decision of H.T. Ong, J. (as he then was) in *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim & Ors.*[8] and his observation therein that "once a caveat has lapsed and a memorial is made by the registering authority it is extinguished for ever."

A careful reading of the judgment of H.T. Ong, J. in that case will show that it turned on a true construction of certain provisions of the former *Land Code* (Cap. 138) which bear no resemblance to the equivalent provisions in the *National Land Code*. Specifically, section 175 of the *Land Code* which expressly prohibited further caveats by the same person in the same matter finds no place in the *National Land Code* and, conversely, there was no provision in the former equivalent to section 329(2) in the latter. I accordingly held that the decision of Arulanandom, J. in *Hong Keow Tee's case (supra)* was given *per incuriam* in that he overlooked relevant statutory provisions, more particularly, vital differences in the wording of the relevant provisions in the former *Land Code* and the *National Land Code* to which I have just adverted, and was accordingly a decision I should refuse to follow.

If I may be pardoned for saying so, this case illustrates how, under the pressures of practice and overcrowded judicial lists, a line of authorities may gradually grow in the wrong direction because important statutory provisions have escaped attention.

It was for the above and other reasons that I dismissed this application.

Application dismissed.

Solicitors: *Chang & Vello; Gan Teik Chee & Ho.*

PUBLIC PROSECUTOR v. SELVARAJAH

[A.Cr.J. (Gunn Chit Tuan J.) November 7, 9 & 10, 1983]

[Penang – Criminal Appeal No. 13 and 14 of 1982]

Criminal Law and Procedure – Charge of carnal knowledge with female person under 16 years of age – Proof of carnal knowledge – Corroboration – Sentence – Women and Girls Protection Act, 1973, s. 16(1).

In this case the respondent had been convicted of the offence of carnal knowledge with a female person under 16 years of age except by way of marriage an offence under section 16(1) of the Women and Girls Protection Act, 1973. He was sentenced to 18 months' imprisonment The Public Prosecutor appealed on the ground of inadequacy of sentence and the respondent appealed against the conviction and sentence.

Held: (1) in cases of carnal knowledge of girls under sixteen years of age, it is sufficient for the prosecution to prove penetration, the crime being complete without emission;

(2) in this case there was not only medical evidence to corroborate the complainant's evidence of the factum of carnal knowledge but also documentary evidence to support her identification of the accused;

(3) the complainant in this case was a consenting party, although her consent was immaterial. Nevertheless the accused was a first offender and in all the circumstances of the case the sentence would be reduced to nine months.

Cases referred to:

(1) *R.* v. *Marsden* [1891] 2 Q.B. 149.
(2) *Din* v. *Public Prosecutor* [1964] M.L.J. 300.
(3) *Director of Public Prosecutions* v. *Kilbourne* [1973] A.C. 729, 758.
(4) *R.* v. *Beale* (1865) L.R. 1 C.C.R. 10.

CRIMINAL APPEAL.

Mohamed Nordin bin Haji Sulaiman (Deputy Public Prosecutor) for the appellant.

Bala Mahesan for the respondent.

Cur. Adv. Vult.

Gunn Chit Tuan J.: Selvarajah s/o Raman M. Mayandi ("the accused") was convicted of the offence of carnal knowledge with a female person under the age of 16 years except by way of marriage under paragraph (1) of sub-section (1) of section 16 of the Women and Girls Protection Act, 1973, and was sentenced to 18 months imprisonment. He appealed against conviction and sentence whilst the Public Prosecutor being dissatisfied with the sentence has also appealed against it on the grounds of inadequacy and the failure of the learned Magistrate to consider "the